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May 29, 2019

VIA CM/ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Mark Nordlicht, et al., No. 1:16-cr-00640-BMC

Dear Judge Cogan:

We represent defendant David Levy. We write regarding potential instructions on bankruptcy law and the comment made by Mr. Mandelbaum about “stealing.” We note that the government has indicated it does not object to an instruction regarding Mr. Mandelbaum’s comment on alleged theft “in principle.” Tr. at 4175:17-23.

Regarding the bankruptcy issue, following our consultation with a bankruptcy lawyer, we respectfully request that the Court issue the following instruction:

Mr. Mandelbaum testified regarding the potential bankruptcy of Black Elk and the possibility of a clawback of funds Platinum had received from that entity. Under federal bankruptcy law, the possibility of a clawback of funds paid by the bankrupt company within a year of the bankruptcy is a civil proceeding and does not, standing alone, suggest impropriety. The law generally bars the clawback of funds transferred more than one year prior to the bankruptcy.

With regard to Mr. Mandelbaum’s testimony regarding stealing, in light of the government’s withdrawal of the statement. and the Court’s Order, Dkt. No. 719, we respectfully request that Mr. Mandelbaum’s testimony at Tr. 4111:3-7, *see* Attachment A, be stricken and the Court issue the following instruction:

Ladies and Gentlemen - during Mr. Mandelbaum’s direct testimony he stated that, in his opinion, he was asked while at Platinum to steal money. I instruct you to ignore Mr. Mandelbaum’s comment about being asked to steal. The testimony is not relevant to your deliberations and has been stricken. You should give it no consideration now or at any future time during this trial, including during your deliberations.



The Honorable Brian M. Cogan
May 29, 2019
Page 2 of 2

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Michael S. Sommer

Michael S. Sommer

Morris J. Fodeman

Kate T. McCarthy

Cc: All Counsel of Record (via CM/ECF)